

tax law studies to U.S. contracting officers and activities. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC (A) 1198.

(c) Each January a summary of significant activities during the preceding year of the administration of the foreign tax relief program shall be furnished by Commanders of the Unified Commands to the General Counsel of the Department of Defense. The summary, in narrative form, shall include actions taken by the Unified Command to discharge its responsibility to supervise and coordinate the preparation and maintenance of country tax law studies. The reporting requirement contained in this subsection is assigned Report Control Symbol DDGC (A) 1199.

PART 212—PRIVATE ORGANIZATIONS ON DoD INSTALLATIONS

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AUTHORITY: 5 U.S.C. 301.

SOURCE: 43 FR 58084, Dec. 12, 1978, unless otherwise noted.

§212.1 Purpose.

This part states DoD policy regarding Private Organizations on DoD Installations; defines and classifies private organizations located on DoD installations; and provides policy guidance for their authorization and operation.

§212.2 Applicability and scope.

(a) The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) Its provisions cover private organizations authorized to operate on DoD installations and not otherwise excluded in §212.3.

(c) Provisions of this part do not apply to nonappropriated fund instrumentalities and other officially recognized Federal Government fund entities.

(d) Policy guidance provided in this part is not intended to supplant or abrogate any specific agreements between the DoD Components and federally sanctioned or affiliated types of private organizations.

§212.3 Exclusions.

(a) For the purpose of this part, the following Type 1 private organizations are exempt from the provisions of this part since they are governed by specific policies and procedures contained in applicable DoD issuances referenced in the text. These include:

(1) Credit Unions

(2) Banking Offices

(3) American National Red Cross

(4) United Service Organizations

(5) United Seamen's Service

(6) Labor organizations subject to Executive Order 11491, as amended, and

(7) Associations of DoD supervisors and management officials.

(b) Certain unofficial activities may be conducted on DoD installations, but need not be formally authorized as Type 3 independent private organizations because of the limited scope of their activities, membership, or funds. Examples are office coffee funds, flower funds, and similar small informal activities and funds. DoD Components may establish the basis upon which such informal activities and funds may operate.

(c) Contractor and subcontractor organizations and funds on DoD installations are excluded.

§212.4 Policy.

(a) Private organizations are *not* nonappropriated fund instrumentalities nor is there an official relationship between their activities and those of DoD personnel who are members and/or participants. They are not held to be an integral part of the military organization, due to the nature of the functions which they perform and the particular characteristics of these organizations which provide for limited Government

supervision, as opposed to the extensive supervision exercised over nonappropriated fund instrumentalities. Private organizations are not entitled to sovereign immunities and privileges accorded to nonappropriated fund instrumentalities. Their operation is of interest and concern to the Department of Defense because of their:

- (1) Location on DoD installations;
- (2) Relationships with elements of both the Federal and private sectors;
- (3) Activities in support of certain recognized programs being conducted for the benefit of members of the DoD family; and
- (4) Responsibilities as employers of U.S. citizens and other personnel.

(b) Specific policy applicable to all types of private organizations:

(1) A private organization normally will not utilize in its title or letterhead (i) the name or seal of the Department of Defense or the acronym "DoD;" (ii) the name, abbreviation, or seal of any Military Department or Military Service; or (iii) the seal, insignia, or other identifying device of the local installation. However, Heads of DoD Components may authorize exceptions if clarity of identification is necessary, provided official DoD sponsorship or endorsement is neither stated nor implied.

(2) Activities of private organizations will not in any way prejudice or discredit DoD Components or other agencies of the Federal Government.

(3) A private organization will not engage in activities which compete with those of any nonappropriated fund instrumentality on a DoD installation.

(4) Discrimination with regard to race, color, marital status, age, religion, national origin, lawful political affiliation, labor organization membership, physical handicap, or sex, will not be permitted in employment practices 32 CFR part 191. Applicable laws with respect to labor standards for employment will be observed.

(5) Membership discrimination based on race, color, national origin or sex will not be permitted. This will not prohibit, however, the establishment of cultural or ethnic private organizations, providing membership is not restricted or discriminatory on the above basis.

(6) Neither appropriated fund activities nor nonappropriated fund instrumentalities shall assert any claim to the assets or incur or assume any obligation of any private organization except as may possibly arise out of contractual relationships. Notwithstanding the foregoing, property abandoned by a private organization upon or after its disestablishment, or donated by it to the installation, may be acquired by the DoD installation under the terms of existing DoD policy on these matters and consistent with the laws applicable to that installation.

(7) Adequate insurance, if appropriate, will be secured in order to protect against public liability and property damage claims or other legal actions that may arise as a result of activities of the organization or one or more of its members acting in its behalf. Since there is no direct, vested interest of the Federal Government or any of its instrumentalities in the assets of a private organization, the direct protection of organizational assets, such as through fidelity or fire insurance, is the responsibility of each private organization's membership.

(8) Guidance on sources of income to private organizations will be as follows:

(i) Except for minimal logistical support authorized in accordance with §212.6 and the sources of income and support authorized those private organizations referenced in the text of this part, private organizations will be generally self-sustaining, primarily through dues, contributions, service charges, fees, or special assessment of members. There will be no direct financial assistance to a private organization from a nonappropriated fund instrumentality in the form of contributions, dividends, or other donations of monies or other assets.

(ii) Private organizations will not engage in resale activities except through (A) thrift shop sales of used clothing and used merchandise; (B) museum shop sales of items related to museum activities; or (C) occasional sales for fund-raising purposes, such as raffles, dances, or carnivals, as approved by Heads of DoD Components or their designees.

(1) Only that merchandise which is listed in DoD Directive 1330.9¹ will be offered during such sales within the continental United States (CONUS), and in no case should sales at any DoD installation be on a frequent or continuing basis.

(2) Heads of DoD Components, or their designees, may approve exceptions to the above restrictions, providing (i) military exchanges or other non-appropriated fund instrumentalities cannot be responsive to the particular resale requirement; and (ii) merchandise is sold only to members and is directly related to the purpose and function of the private organization.

(9) All laws governing comparable private sector activities will be examined and the need for compliance by the private organization therewith determined.

(c) In addition to the foregoing policy, affiliated and independent private organizations will comply with the following:

(1) The nature, function and objectives of the local private organization will be delineated in writing and submitted for the approval of the head of the DoD installation. These written provisions will be in the form of a duly prepared constitution, by-laws, charter, articles of agreement, or other authorization documents acceptable to the membership. Documentation will also provide for:

(i) Establishment of local membership eligibility, which will be primarily for members of the DoD family.

(ii) Designation of management responsibilities, to include the accountability for assets, satisfaction of liabilities, disposition of any residual assets upon dissolution, and otherwise assuring responsible financial management.

(iii) An understanding by all members as to whether they are personally liable if the assets are insufficient to discharge all liabilities. (Also, see paragraph (b)(9) of this section).

(2) In reviewing the above documentation and during periodic review of private organizations, activities that result in a monetary gain to the mem-

bership, either individually or collectively, will be carefully considered by the head of the DoD installation.

(i) Income will not accrue to individual members, except through wages and salaries as employees of the private organization or through remuneration for services rendered, and will be derived primarily for the purpose of offsetting expenses of operation, which may include competitive awards or charitable contributions contemplated by the organization.

(ii) However, the head of the DoD installation may approve the operation of such a private organization as an investment club on the installation, providing compliance with all other policy provisions outlined above is required.

(3) Type 2 or Type 3 private organizations may be discontinued or dissolved upon determination of its membership or upon determination by the head of a DoD installation to withdraw authorization to operate on the installation.

§212.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)* (ASD(MRA&L)) is responsible for all policy matters related to the organization and monitoring of private organizations, not otherwise delineated in referenced issuances. Coordination of private organization matters will be accomplished with DoD Components through normal staff procedures.

(b) *DoD Components* will assure implementation of this Instruction and compliance with its provisions. Specifically, Heads of DoD Components, or their designees, will:

(1) Maintain cognizance over all private organizations located on the installations, facilities, or activities for which responsible, including their initial identification and classification, and

(2) Conduct a periodic review of each private organization in order to:

(i) Insure that the membership provisions and purposes for which created still apply, thereby justifying continuance. Any revisions to the conditions under which originally established will necessitate further review, documentation and approval action for continued recognition;

¹Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120; Attention: Code 301.